

REBECCA D. WALKER
STATE REPRESENTATIVE
9th District



HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Judiciary, Chair
Health & Human
Development, Vice-Chair
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Veterans Affairs

House Judiciary Committee
House Chamber
April 24, 2013

Chair Walker called the meeting to order at 12:04 p.m., and introduced **SB 19 w/ SA 1: AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DEATH PENALTY**, and recognized Rep. Scott to speak on the bill.

Rep. Scott explained SB 19 repeals the death penalty in the State of Delaware. SA 1 excludes the 17 men who currently sit on death row. Rep. Scott stated that the death penalty is unjustly applied to low income groups and racial minorities, and does not deter crime. He said that the State of Delaware currently spends over \$5 million per year on the death penalty. Rep. Scott also said that the death penalty is only practiced in countries like China, Pakistan and Iran, and is therefore inconsistent with American values.

Senator Peterson, prime Senate sponsor of SB 19, urged the House Judiciary Committee to vote the bill out of committee. She emphasized that the committee's vote is about legislative process and government transparency.

Brendan O'Neill, Delaware's public defender, pointed out that Superior Court Judge Norman Barron supports repealing the state death penalty. Mr. O'Neill stated that Delaware's death penalty is expensive. In FY 12, the Public Defender's Office spent over \$2.3 million on capital defense alone, which does not include the costs of investigation, prosecution or the allocation of judicial and correctional resources. Mr. O'Neill noted that Delaware's Capital Statute is more comprehensive than most states', and includes 22 aggravating circumstances that render a capital offender death eligible. Mr. O'Neill explained that there are 40 capital cases pending adjudication, including 18 in the Public Defender's Office and 22 in the Office of Conflict Counsel. Mr. O'Neill asserted that these cases are supposed to be reserved for the worst of the worst, but in practice the death penalty has expanded.

Rep. J. Johnson asked Mr. O'Neill how the Public Defender's office evaluated the cost of the death penalty. Mr. O'Neill stated that the \$2.3 million figure was based on the direct expenditures involved in a capital case, including expert witnesses, psychologists, and psychiatrists, and includes the salaries of mitigation specialists who would not be required in non-capital cases. Mr. O'Neill also included the prorated cost of time spent on capital cases by the Public Defender's office, as well as the Office of Conflict Counsel's hourly salaries of attorney fees devoted to post-conviction relief.

Rep. J. Johnson asked how the \$2.3 million savings would compare to a life without parole sentence. Mr. O'Neill stated that he did not know the exact savings when compared to life without parole. Mr. O'Neill explained that the Public Defender's office would save time and attorney fees pursuing capital cases. The Public Defender's office would also no longer require mitigation specialist salaries.

Rep. J. Johnson asked Rep. Scott if SA 1 is a friendly amendment. Rep. Scott said that it is a friendly amendment, and affirmed his support for it.

Rep. Spiegelman asked Mr. O'Neill when the last time the legislature approved a task force to review wrongful convictions, cost effectiveness, and modernization. Mr. O'Neill stated that he did not know the last time there was a task force. He noted that since 1991, when the jury-sentencing system was replaced with a judge-sentencing system, the rate of conviction has remained the same while the rate of death sentences has increased.

Rep. Spiegelman asked Rep. Scott if he had an answer to that question. Rep. Scott stated that he did not.

Chair Walker recognized Sen. Peterson. Sen. Peterson said that Rep. Melanie George Smith introduced a bill many sessions ago that did not get out of committee.

Rep. Mitchell asked Rep. Scott what precipitated SB 19. Rep. Scott said that good public policy requires the careful evaluation of alternatives. He reemphasized that capital punishment is not cost effective, does not deter criminals, and is inconsistent with American values.

Rep. Mitchell pointed out that the number of death sentences in Delaware is low when compared with other states, and said that he has not seen evidence of wrongful convictions in Delaware. He also expressed concern for the safety of correctional officers if the death penalty was to be repealed.

Sen. Peterson responded to Rep. Mitchell's point. She said that death row inmates have little left to lose, which puts correctional officers at more risk. Sen. Peterson stated that the death penalty is unevenly applied. Citing a Cornell Law School evaluation of Delaware's capital sentence outcomes, Sen. Peterson said that a black person who kills a white person is seven times more likely to be given a death sentence than a black who kills a black. She noted that 10 states that have the death penalty also have the highest murder rate, revealing no correlation between capital punishment statutes and deterrence. Sen. Peterson said that there are 14 studies that found the death penalty to be two to three times more expensive than life without parole. Sen. Peterson concluded that most murderers in Delaware do not receive the death penalty.

Rep. Mitchell reaffirmed that Delaware rarely makes mistakes.

Rep. Spiegelman asked if a witness from the Attorney General's office will be presenting. Chair Walker stated that the Attorney General's office will present as part of public comment. Rep. Spiegelman asked if there will be an opportunity to cross-examine that witness. Chair Walker stated that there will not be such an opportunity.

Chair Walker opened the floor for public comment.

Jill Fuchs of the League of Women Voters stated that her organization supports death penalty repeal because it is costly and does not act as a deterrent. Ms. Fuchs expressed concern for the death penalty's imposition on the intellectually disabled, impoverished, and those of ethnic or racial minority groups.

Bill Topping of the Police Chief's Council stated that there is no evidence of police misconduct in connection with the death penalty, or evidence that any person has been wrongfully executed in the State of Delaware.

Sonia Sloan, a victim's family member, shared her personal experience with loss. She supports the repeal of the death penalty.

William Bryson of the Police Chief's Council noted that the death penalty is low on the list of priorities for his organization. He stated that the Police Chief's Council is opposed to death penalty repeal because there are no verifiable records that an innocent person has been executed in the State.

Richard Kiger of the Delaware Repeal Project, a victim's family member, shared his personal experience with loss and expressed his strong support of death penalty repeal.

Ruth Spicer, a victim's family member, shared her personal experience with loss and expressed her opposition to death penalty repeal. She stated that justice prevailed in her son's murder trial.

Stewart Dotts, a juror in a death penalty case, expressed his support for death penalty repeal and added that he is haunted by his decision to vote for a death sentence.

Fred Calhoun, president of the Fraternal Order of Police (FOP), said that his organization is opposed to death penalty repeal. Mr. Calhoun said that the FOP believes the judicial system serves two important purposes: to educate and rehabilitate those charged with committing non-violent crimes; and to punish those convicted of committing violent crimes. Mr. Calhoun affirmed that the death penalty is a fair sentence for those who murder police officers.

Randy Steidl, chairman of Witness Innocence, expressed his support for death penalty repeal. He stated that he was wrongfully convicted of a capital crime and spent 12 years on Illinois' death row.

Tom Bracken, president of the Delaware State Troopers Association, said his organization is opposed to death penalty repeal. Mr. Bracken stated that the aggravating circumstances reflected in Delaware Code deter violent offenders from committing crimes. Mr. Bracken affirmed that the Delaware law enforcement community is united in opposition to death penalty repeal.

Ron McAndrew, a retired executioner, shared his personal experience interacting with an innocent man on Florida's death row.

Carol Taylor, a victim's family member, shared the story of her mother's murder. Ms. Taylor emphasized that the death penalty represents justice for victims' families.

Kristin Froehlich, a victim's family member, shared her personal experience with grief and loss. Ms. Froehlich said she supported death penalty repeal because it affords faster legal finality to victim's families.

Kim Bowers, a victim's family member, emphasized that there is no tangible way to quantify the loss of a family member to murder. Ms. Bowers expressed that she opposes death penalty repeal because life without parole does not substitute for a death sentence.

Walter Everett, a victim's family member, articulated the healing journey of grief and loss. Mr. Everett stated expressed the need for a restorative justice system.

State Prosecutor Kathleen Jennings pointed out that intent to kill constitutes murder in the first degree. Ms. Jennings affirmed that the death penalty is reserved for the most heinous crimes.

Ann Coleman, a victim's family member, shared her personal experience of loss and mental illness. Ms. Coleman suggested that the State redirect funds spent on the death penalty to services for victims' families.

Deputy Attorney General Ipek Medford argued that death penalty statistics should be derived from Delaware alone. Ms. Medford emphasized that there was no racial disparity in Delaware's death penalty sentencing system.

Rabbi Yair Robinson of the Congregation Beth Emeth said the Talmud imposes severe restriction on execution. Rabbi Robinson expressed the need for the State to protect the sanctity of life.

Deputy Attorney General Steven Wood said that five of the 50 people who have been sentenced to death in Delaware since the 1970s have been previously convicted of homicide. Mr. Wood cited a U.S. Department of Justice study which found that 9 percent of people on death row have been previously convicted of murder. Mr. Wood pointed out that in the last 25 years, four murderers have escaped Delaware prisons. Mr. Wood expressed concern for the safety of correctional officers and counselors.

Cheryl Vest, a victim's family member, said that life without parole does not compare to the death penalty, nor afford justice for victim's families.

Rev. Amy Yarnall shared that the United Methodist Church's opposition to the death penalty, and said that the Church is deeply committed to the value of human life.

Stacy Cook, a victim's family member, said that scientific advancements in DNA technology will strengthen analytic techniques, and ensure accurate convictions.

Rev. Paula Maiorano of the Interfaith Coalition Building Blocks for Wilmington, expressed concern for the racial proportionality in death sentencing.

Rev. Patricia Downing of Trinity Episcopal Parish read a statement on behalf of many faith communities. Rev. Downing affirmed that there are many alternatives to the death penalty, and emphasized the inherent value of human life.

Ezra Temko of Delaware Americans for Democratic Action expressed concern for disproportionate racial sentencing. Mr. Temko stressed that the bill deserves a vote on the floor of the Delaware House of Representatives.

Bruce Gillette, a Presbyterian pastor from Wilmington, said that faith leaders know the trauma and grief that murder victims' families feel. Pastor Gillette submitted a law review article that compares sentencing in Texas and Minnesota.

Councilwoman Sherry Dorsey Walker of Wilmington, a victim's family member, described her personal story of grief and loss. Councilwoman Dorsey Walker pointed out that the City of Wilmington approved a resolution supporting death penalty repeal.

Dr. Niaz Kasravi, the national criminal justice director of the National Association for the Advancement of Colored People (NAACP), pointed out that the death penalty does not deter crime and is racially biased. Dr. Kasravi emphasized a Cornell Law School study that found 73 percent of Delaware capital sentences were imposed when the victim is white.

Sally Milbury-Steen of Delaware Pacem in Terris said that life without parole is not? an adequate alternative to the death penalty. Ms. Milbury-Steen emphasized that capital punishment is not a deterrent to crime.

Mary Crowley, vice president of the Delaware Federation of College Democrats, said that young people support death penalty repeal.

Kevin O'Connell of the Office of the Public Defender clarified that disproportionate sentencing is most relevant in the race of the victim. Mr. O'Connell said that these data are derived from Federal Bureau of Investigation statistics, and noted that they are most pressing when crimes are interracial.

Geoff Klopp, president of the Correctional Officers Association, expressed opposition to death penalty repeal out of concern for the safety of correctional officers.

Jane Hovington emphasized that she supports repeal because offenders have to deal with the consequences of their actions.

Kimberly and Joy Whaley, family members of a murder victim, emphasized their opposition to death penalty repeal. They argued that the death penalty should be reserved for the worst of the worst offenders.

Chair Walker closed public comment, and recognized Rep. Atkins. Rep. Atkins said that the House Judiciary Committee meeting was posted and advertised, and represents open government. He also said that there is no deterrent for murder without a death penalty statute.

Rep. Spiegelman stated that HB 141, which was defeated in committee during the 145th General Assembly, did not look at the cost of the death penalty, nor propose modernization reforms.

Rep. Potter said he supports the legislation, and stated that it will make a difference in saving innocent persons from wrongful executions. Rep. Potter said that he had a member of his family who was murdered, and affirmed that capital punishment funding should be redirected to help families with counseling.

Rep. Wilson said that he cannot support SB 19 because there were two murders in the 35th district. He also felt that there needs to be a deterrent in the criminal justice system.

Rep. Mitchell asserted that the death penalty is working and said that it is not racially biased. He said that he appreciates the statistics provided from other states, but reaffirmed his conviction that the State capital punishment statute is working.

Rep. Smyk requested to make a motion. Chair Walker declined Rep. Smyk's request because the bill's House sponsor had not made closing comments.

Rep. Scott said that death penalty repeal reallocates resources to other important priorities, such as crime investigations. Rep. Scott reemphasized that Delaware is fourth highest in the nation with regard to violent offenses, and said that the death penalty does not provide a deterrent effect for violent offenders. He stated that the death penalty does not reflect American values. He said that he understands the emotion of victims' families. He concluded that they differ on the solution, but agree that there is a problem.

Rep. Scott motioned to table SB 19, and Rep. Brady seconded. The motion to table failed with 5 in favor and 5 opposed.

Rep. Smyk motioned to keep the bill in committee.

Vice Chair Smith called a point of order. She clarified that since the motion to table did not pass, and that there is no motion to release, SB 19 remains in committee until the time that the committee motions to release the bill.

Rep. Smyk withdrew his previous motion. Rep. Smyk motioned to defeat the bill.

Chair Walker recounted the votes on Rep. Scott's previous motion to table SB 19, revealing 5 in favor and 6 opposed.

Vice Chair Smith stated that the operative motion would be to release the bill. Since there was no such motion, the bill remains in committee.

Rep. Spiegelman called a point of order. He asked if Chair Walker voted not to table SB 19 on the motion to table. Chair Walker affirmed that she voted against tabling SB 19.

Vice Chair Smith clarified that SB 19 does not have enough votes to approve it out of committee; however, if the Chair can find enough members to sign the bill backer, SB 19 may be released from committee.

Chair Walker adjourned the House Judiciary Committee at 2:01 PM.

Respectfully submitted:

Paul Ruiz

Enclosures:

Statement and Resolution from the City of Wilmington
Statement from the Diocese of Wilmington
Statement from the National Association of Criminal Defense Lawyers
Statement from the Leaders of Delaware's Jewish Community
Joint Statement by Delaware Church Leaders
Statement from the Episcopal Church Diocese of Delaware
Statement from the United Methodist Church
Statement from Christopher Bullock of the New Castle City Council
Statement from Americans for Democratic Action
Statement from the Progressive Democrats for Delaware
Statement from Delaware Citizens Opposed to the Death Penalty
Statement from the Delaware Center for Justice
Statement from the New Castle Presbytery of the Presbyterian Church
Statement from the League of Women Voters
Prepared testimony from Carol Taylor
Prepared testimony from Sonia Schorr Sloan
Prepared Statement from Ezra Temko
Prepared Statement from Stacy Cook